IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.68 OF 2004

Commissioner, Sangli Miraj Kupwad
Cities Municipal Corporation .. Petitioner

versus

M/s.Bhide And Sons Pvt.Ltd. .. Respondent

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Mr.N.V. Walawalkar for the petitioner.

Mr.Anilkumar Patil for the respondent.

CORAM : D.G. KARNIK, J

DATED : 17th October 2006

P.C.:

1. Heard both sides.

2. This civil revision petition is directed against the judgement and order dated 12th February 2004 passed by the 3rd Addl. District Judge, Sangli allowing the appeal filed by the respondent and thereby passing a money decree in the sum of Rs.1,630/- against the petitioner.

3. The petitioner is a municipal council governed by the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'the Act')

4. The respondent filed a suit against the petitioner for recovery of Rs.1,489/- which he alleged were wrongly charged to him as an octroi duty. The respondent purchased a diesel power generating set on 22nd March 1983 and paid the octroi duty on its import. The engine of the said generator did not work satisfactorily. He therefore made a complaint to the manufacturer who agreed to replace the defective engine. Accordingly, the manufacturer replaced the defective engine which was received by the respondent on or about 12th November 1987. On import of the replacement engine, the petitioner demanded an amount

of Rs.1,489.85 as on octroi duty on the said replacement engine which the respondent paid under protest. According to the respondent, the petitioner had no authority to recover the octroi, as the engine was received by way of a replacement of the defective engine on which the octroi duty was already paid. He therefore filed a suit against the petitioner for recovery of Rs.1,489.85 which according to him were wrongly recovered from him as an octroi duty.

5. The trial court dismissed the suit. However on appeal, the District Court allowed the appeal and directed refund of the amount recovered as an octroi duty holding that the engine was a replacement of the defective engine and the petitioner had no right to levy an octroi on the replacement engine. That judgement is impugned in this revision petition.

6. Mr.Walawalkar, learned Sr. Counsel for the petitioner submitted that the civil court had no jurisdiction to entertain and try the suit. He submitted that section 105 of the Act, as it stood at the relevant time imposed a duty on the petitioner municipal council to levy octroi as a tax. Octroi was levied as a tax under the provisions of the Act and

any person aggrieved by the levy of any tax has a right of appeal against the tax under section 169 of the Act. Section 172 of the Act provides that no objection can be taken for the levy of any tax in any manner other than as provided in the Act. Therefore, the only method of challenging the levy of octroi is by filing of an appeal under section 169 of the Act. Jurisdiction of the Civil Court to entertain a suit against the levy of octroi is impliedly taken away and a suit challenging the levy and/or recovery of octroi must be held to be barred by necessary implication.

7. Mr.Patil for the respondent submitted that objection to the maintainability of the suit was not raised in the trial court nor before the appellate court. He therefore submitted that the objection to the jurisdiction of the civil court cannot be raised for the first time in the revision application. In my view, the objection has no merit. It is settled principle of law that jurisdiction cannot be conferred by consent of the parties. If a court does not have an inherent jurisdiction to entertain and try a suit, the suit would not be maintainable and the mere fact that a party-defendant does not raise an objection to the jurisdiction of the court would not confer

jurisdiction on the court to entertain and try the suit. This being the legal position the objection about inherent lack or bar of jurisdiction of a court to try a suit can be raised at any stage of the proceeding if such lack can be shown on the basis of the material existing on the record of the suit. Therefore, it would be necessary to examine whether the civil court had the jurisdiction to entertain and try the suit.

8. In the present case, the amount of Rs.2,657/- was recovered as an octroi duty - a tax levied under section 105 of the Act. According to the respondent, the levy was erroneous in as much as it was not a new import but the import of the engine by way of replacement of the defective engine. It is not the case of the respondent that the petitioner had no jurisdiction to levy the tax by way of octroi at all. The petitioner admittedly has a jurisdiction to levy tax by way of octroi on import of the goods. The only question is whether the octroi was payable in respect of the import of replacement engine. This is a question which is required to be decided by the authorities under the Act. If the importer of the goods is aggrieved by the levy or with the quantum of

levy, it is open for him to challenge the levy or the quantum of levy by filing an appeal u/s.169 of the Act which provides that an appeal against any claim for taxes or other duties including a bill presented to a person may be made to a judicial magistrate. Section 172 of the Act provides that no objection shall be taken to any valuation, assessment or levy, nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in the Act. Thus, an objection to the levy of a tax or an assessment cannot be taken except in the manner provided in section 169 of the Act i.e. except by filing of an appeal before the judicial magistrate. In my view, therefore, the jurisdiction of a civil court to entertain a suit questioning the levy of an octroi is barred.

9. I am fortified in my view by the decision of the Supreme Court in NDMC Vs. Satish Chand reported in (2003) 10 SCC 38. In that case, the question for consideration was about the maintainability of a civil suit to challenge the assessment and levy of property tax on the property owned by the respondent. On interpretation of section 84 and 86 of the Punjab and

Municipal Act,1911 the relevant provisions of which are pari materia with the provisions of section 169 and 172 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965, the Supreme Court held that the suit challenging the assessment and demand of property tax was barred and could not be entertained u/s.9 of the Code of Civil Procedure.

10. Mr.Walawalkar, learned counsel for the petitioner also invited my attention to an unreported decision of the Supreme Court in Administrator, Pimpri Chinchwad Municipal Corporation Vs. Tata Engineering & Locomotive Company Ltd. (SLP No.3374 of 1987) decided on 24th April 1995. In that case, while interpreting the provisions of section 406 of the Bombay Provincial Corporation Act 1949, which provides for an appeal against the rateable value or a tax fixed by a municipal corporation, the Supreme Court held that the High Court should not have entertained a writ petition challenging the levy and directed the respondent company to file an appeal under section 406 of the Bombay Provincial Municipal Corporations Act.

11. Courts appear to have consistently held that

a court should not entertain a suit or even a writ petition challenging the levy of a tax by a municipality but relegate the person aggrieved to the statutory remedy of an appeal provided under the relevant Municipal Act.

12. In my view, therefore the suit filed by the respondent for recovery of money recovered by the petitioner as an octroi (i.e. a tax) duty was barred by section 169 read with section 172 of the Act. In this view of the matter, the revision application is allowed and the suit filed by the respondent is dismissed with costs.

(D.G. KARNIK, J)